

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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CONSOLIDATED ROYALTIES, INC., a corporation,  
and C. B. CALLAHAN,

Appellants,

vs.

HARRY ASHTON, Trustee of the Estate of Deep  
Hole Drilling Corporation, a corporation,  
Bankrupt, HOWARD SUPPLY COMPANY,  
a corporation, I. RUDE, FRED LUNDBERG,  
J. C. HAYWARD, and STANDARD OIL  
COMPANY OF CALIFORNIA, a corporation,  
Appellees.

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Transcript of Record

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Upon Appeal from the District Court of the  
United States for the Southern District  
of California, Central Division.



No. 10088

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Circuit Court of Appeals

For the Ninth Circuit.

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and C. B. CALLAHAN,  
Appellants,  
vs.

HARRY ASHTON, Trustee of the Estate of Deep  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

For Appellants:

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For Appellee Harry Ashton, Trustee:

RUSSELL B. SEYMOUR, Esq.,  
535 Citizens National Bank Building,  
453 South Spring Street,  
Los Angeles, California;

For Appellees I. Rude, Fred Lundberg and J. C.  
Hayward:

MESSRS. REITER & REITER  
FRANCIS M. REITER, Esq.,  
437 South Hill Street,  
Los Angeles, California;

For Appellee Howard Supply Company:

O. C. SATTINGER, Esq.,  
1016 Southern California Gas Co. Build-  
ing,  
Los Angeles, California;

For Appellee Standard Oil Company of California:

MESSRS. LAWLER, FELIX & HALL,  
MARCUS MATTSON, Esq.,  
WILLIAM T. COFFIN, Esq.,  
800 Standard Oil Building,  
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For Appellee Deep Hole Drilling Company, Bankrupt:

GEORGE APPELL, Esq.,  
CYRIL MOSS, Esq.,  
706 Garfield Building,  
403 West Eighth Street,  
Los Angeles, California. [1\*]

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\*Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States  
Southern District of California  
Central Division

#34928-C

In the Matter of  
DEEP HOLE DRILLING CORPORATION,  
Bankrupt.

#34929-C

In the Matter of  
KOVELL OIL COMPANY,  
Bankrupt.

PETITION FOR ORDER TO SHOW CAUSE  
AND FOR RESTRAINING ORDER

To the Honorable Samuel W. McNabb, Referee in  
Bankruptcy in the Above Matters:

The petition of Harry Ashton respectfully shows:

That each of the bankrupts herein did, on or about the 23rd day of September, 1939, file a petition under Provisions of Chapter 11 of the National Bankruptcy Act; that on or about said date, the petitioner was appointed receiver in each of said matters under the provisions of Chapter 11 of the National Bankruptcy Act; that thereafter, and on or about April 22, 1940, by orders duly made herein, each of said bankrupts was adjudged a bankrupt and the petitioner was appointed trustee of the estates of each of said bankrupts, and is now the duly appointed, qualified and acting trustee in

each of said matters, and of all the assets of each of said matters;

That among the assets of said Deep Hole Drilling Corporation is a certain oil well commonly known as Deep Hole Well #1, located at Torrance, California, on property described as follows, to-wit:

East 2 acres of the East 5 acres of the North 350.08 feet of Lot 50, Tract 15, Los Angeles County. [2]

That among the assets of the Kovell Oil Co. are certain oil wells respectively described as follows, to-wit:

Kovell #1, situated on Lot 105, Tract 639, Torrance, Field California, Kovell #2, situated on Lot 41, Tract 588, Torrance Field, California, Kovell #3, situated on Lot 63, Tract 588, Torrance Field, California, Kovell #4, situated on Lot 36, Tract 588, Torrance Field, California.

That the production from said wells has been sold, and is now being sold, to the Standard Oil Company of California, and to the Union Oil Company of California; that certain moneys, the extent of which is unknown to the petitioner, by proceeds from sale of said production, are now being held by said purchasers; that the following persons, to-wit: I. Rude, Howard Supply Company, a corporation, Consolidated Royalties, Inc., C. B. Callahan, Fred Lundberg, and J. C. Hayward, claim to have some



right, title or interest in or to the production and the proceeds from such production, from said oil wells, and in and to the proceeds of said production which is now being held by the Standard Oil Company of California and the said Union Oil Company of California, each of which companies refuses to turn over the proceeds of said production to the petitioner;

That your petitioner further alleges that at all times there have been creditors with claims provable in said estates with claims arising from the drilling operation and maintenance of said oil wells, and each of them, and that there are not assets of sufficient value with which to pay the claims of trade creditors of either of said estates.

In the event that any of the persons named herein asserts he is the holder of any executory contract created by either of said bankrupts, the trustee prays for authority to disaffirm said contracts and each of them; [3]

That partial hearings were had in respect to some of the foregoing matters but same were discontinued by reason of the tentative approval of plan of arrangements submitted in each of said estates;

That the said C. B. Callahan and Consolidated Royalties, Inc., threatened to sue the said Standard Oil Company of California for portions of proceeds from production held by that company, the institution and prosecution of which suit will act to the detriment of the trustee and to the estates gener-

ally; that all matters involved in any such litigation may properly be presented before this court.

Wherefore, petitioner prays that an order be made directed to each of the persons above named requiring each of said persons to be and appear before this court at a time and place fixed in said order to show cause, if any there be, why a further order should not be made directing the said Standard Oil Company of California and Union Oil Company of California, to turn over to the petitioner the proceeds of all production heretofore shipped and which may be shipped to said companies for which previous payment has not been made, and adjudging and decreeing that none of the other persons above named has any right, title or interest in or to the production from any of said wells or in or to the proceeds of any of said production, and fixing and classifying the rights of said persons in respect to the rights of general creditors and for such other and further relief as may be proper.

Your petitioner further prays that an order be made forthwith restraining the said C. B. Callahan and Consolidated Royalties, Inc., from instituting or causing to be instituted any action or proceeding in any court other than in this [4] bankruptcy

court in respect to the proceeds from the production of any of said wells.

HARRY ASHTON

Petitioner and Trustee.

GEORGE T. GOGGIN & RUSSELL B. SEYMOUR,

By RUSSELL B. SEYMOUR

Attorneys for Petitioner.

(Verified)

[Endorsed]: Filed May 17, 1940. Samuel W. McNabb, Referee. Filed Dec. 12, 1941. R. S. Zimmerman, Clerk. [5]

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[Title of District Court and Cause.]

ORDER TO SHOW CAUSE AND  
RESTRAINING ORDER

On the reading and filing of the duly verified petition of Harry Ashton, trustee in each of the above matters, and on motion of George T. Goggin and Russell B. Seymour, attorneys for said trustee, no adverse interests appearing thereat,

It is ordered that I. Rude, Howard Supply Company, a corporation, Consolidated Royalties, Inc., C. B. Callahan, Fred Lundberg, J. C. Hayward, Standard Oil Company of California, and Union Oil Company of California, and each of them, be and appear before this court, Federal Building, Los Angeles, Calif., on the 27 day of May, 1940, at



3 P.M. to then and there show cause, if any there be, why the relief prayed for by said trustee should not be granted; and

It is further ordered that, pending further order of the court, each of the respondents above named be and hereby is, restrained from initiating any proceedings or action, or further conducting any present proceeding or action, in respect to any interest in the property described in said trustee's petition, or the production, or the proceeds of production from said property. [6]

It is further ordered that service herein shall be deemed complete if a certified copy of this order and a true copy of said petition be served upon each of said persons or upon the attorney of record herein of said persons, respectively, on or before five days prior to the time fixed for said hearing, and said service may be made by any male citizen of the United States over the age of 21 years, not a party to this proceeding.

Dated this 17 day of May, 1940.

SAMUEL W. McNABB

Referee in Bankruptcy.

[Endorsed]: Filed May 17, 1940. Samuel W. McNabb, Referee. Filed Dec. 12, 1941. R. S. Zimmerman, Clerk. [7]

In the District Court of the United States  
for the Southern District of California  
Central Division

No. 34928-C

In Proceedings for an Arrangement

In the Matter of

DEEP HOLE DRILLING CORPORATION, a  
California corporation,

Debtor.

ANSWER OF RESPONDENTS, CONSOLI-  
DATED ROYALTIES, INC., A CORPORA-  
TION, AND C. B. CALLAHAN TO ORDER  
TO SHOW CAUSE AND PETITION UPON  
WHICH IT IS BASED.

Come now Consolidated Royalties, Inc., a corpo-  
ration, for itself, and C. B. Callahan for himself,  
and not for any other respondent, and expressly re-  
serving their objections to the jurisdiction of this  
Honorable Bankruptcy Court to summarily deter-  
mine this matter, and in answer to the Order to  
Show Cause issued by the Honorable Samuel W.  
McNabb, Referee in Bankruptcy in the above en-  
titled matter, under date of May 17, 1940, return-  
able May 27, 1940, and directed to the said answer-  
ing respondents, said respondents respectfully al-  
lege as follows:

## I.

That under date of September 30, 1938, Henry C. Hopkins and Clarence V. Hopkins, as lessors, entered into an oil and gas lease with Twin Oil Company, a corporation, as lessee, which lease in part covered the following described property, situate in the County of Los Angeles, State of California, to wit:

The East 2 acres of the East 5 acres of the North 350.08 feet of Lot 50, Tract 15, as per map recorded in Book 12, Page 189 of Maps, in the office of the County Recorder of Los Angeles County, California;

that said lease provided that the term thereof was for a definite [8] number of years and so long thereafter as oil and/or gas should be produced therefrom in paying quantities; that thereafter the lessee's interest under said oil lease was assigned to the Deep Hole Drilling Corporation, Debtor, which assignment was recorded on December 10, 1938, in Book 16207, Page 354, of Official Records, in the office of the County Recorder of Los Angeles County, California;

## II.

That said Deep Hole Drilling Corporation drilled and completed its No. 1 well on the above described property, which well was placed on production on February 5, 1939;

## III.

That pursuant to an application filed therefor, by the said Deep Hole Drilling Corporation, the



Department of Investments of the State of California, through the Commissioner of Corporations of said State, issued on March 25, 1939, a permit to said Deep Hole Drilling Corporation to sell and issue to these answering respondents an aggregate of not to exceed to either or both of them, twelve 1% participating royalty interests, without maintenance charge, of all oil, gas and other hydro-carbon substances produced and saved from the well designated as well No. 1, at and for the price of \$950.00 for each 1% interest;

#### IV.

That attached to the application for said permit was the form of conveyance of said royalty interests proposed to be used; that said permit further provided that the said Deep Hole Drilling Corporation should execute said conveyance in the form so filed with the application;

#### V.

That pursuant to the authority granted by the aforesaid permit, Deep Hole Drilling Corporation did, on March 27, 1939, sell, assign, transfer and set over to Consolidated Royalties, Inc., a corporation, an overriding royalty interest of 5%, and to C. B. [9] Callahan an overriding royalty interest of 7% of the oil produced, saved and sold, and an equal amount of the net proceeds received by the operator from the sale of all gas, casinghead gas and all gasoline produced, saved and sold from the real

property hereinabove described, from and including March 1, 1939, subject to the terms of the lease, but providing that said interest should not be chargeable with any operating costs of the well or lease and further provided said Deep Hole Drilling Corporation should execute and deliver to the purchaser of such oil, gas or other hydro-carbon substances division orders necessary or required to enable these respondents to receive direct from such purchasers the moneys due; that a true and correct copy of the form of the conveyance of said 5% interest to Consolidated Royalties, Inc., is attached hereto, marked Exhibit "A"; that the form of conveyance of said 7% interest to C. B. Callahan is identical, with the exception of the amount of 7% so conveyed:

That as consideration for the said conveyance, Consolidated Royalties, Inc. paid to Deep Hole Drilling Corporation the sum of \$4,750.00 cash, lawful money of the United States, and C. B. Callahan paid to said Deep Hole Drilling Corporation the sum of \$6,650.00, lawful money of the United States, being \$950.00 for each 1% royalty interest so conveyed, as authorized by said permit, to the respective respondents;

## VI.

That ever since March 27, 1939, Consolidated Royalties, Inc. and C. B. Callahan have been and now are the owners and holders of said 12% interest so conveyed to them and these answering respond-

ents caused said conveyances to be recorded in the office of the County Recorder of Los Angeles County, California, on March 30, 1939; That at the time of said conveyance the said Deep Hole Drilling Corporation was solvent and there were only approximately \$4,000.00 in unpaid obligations owing by said Deep Hole Drilling Corporation, with the exception of the claim of Howard Supply Company herein referred to; [10] that as part of the application to the Corporation Commissioner of the State of California, in connection with said conveyances, and as one of the moving considerations to these answering respondents for obtaining said conveyances, the Howard Supply Company executed and delivered to said Corporation Commissioner an agreement, which, by its terms, provided that said corporation, as a creditor of the Deep Hole Drilling Corporation, would not in any wise interfere with the payment of royalties from the above described real property, as a creditor or otherwise;

## VII.

That prior to March 27, 1939, Deep Hole Drilling Corporation entered into a contract with the Standard Oil Company of California for the purchase of the oil to be produced from said Deep Hole Well No. 1, and said Standard Oil Company has been taking the said oil production from said well under said agreement, and still is so purchasing the same;



That on March 29, 1939, Deep Hole Drilling Corporation executed and delivered to Standard Oil Company of California a division order directing said purchaser to pay 12% of the proceeds of said oil from Deep Hole Well No. 1 to respondent Consolidated Royalties, Inc., which order was, by its terms effective as of March 1, 1939, and was irrevocable; that a true and correct copy of said division order, which was consented to by respondent C. B. Callahan, is attached hereto and marked Exhibit "B", and is by this reference made a part hereof; that said division order was accepted by said Standard Oil Company of California; that said corporation at all times thereafter paid to said Consolidated Royalties, Inc., said 12% of the proceeds of the sale of said oil, through the month of August, 1939, but has made no payment thereof since September 1, 1939; that respondents are informed and believe and upon such information and belief allege, that there is now due, owing and unpaid on the books of the Standard Oil Company of California for the benefit of [11] respondents, being 12% of the oil runs from September 1, 1939, through April 30, 1940, the total sum of \$846.08;

That insofar as the 7% royalty interest of C. B. Callahan is concerned, Consolidated Royalties, Inc. is acting as his agent for the purpose of collecting said royalty and has no right, title or interest therein or thereto;



VIII.

That on May 15, 1940, these answering respondents filed an action in the Municipal Court of the City of Los Angeles, County of Los Angeles, State of California, to recover said sum of \$846.08;

IX.

That subsequent to the acquisition by these answering respondents of said 12% interest, the Deep Hole Drilling Corporation entered into the drilling of other wells on property other than that hereinabove described; that these respondents have no interest whatsoever in these said wells, or in or to the production therein or therefrom; that the obligations incurred with the drilling of said additional wells on other properties resulted in the filing of the petition of the Deep Hole Drilling Corporation and its subsequent adjudication as a bankrupt on or about April 22, 1940;

That these respondents did not at any time nor have they ever participated in the conduct, management or business of Deep Hole Drilling Corporation in the drilling of the wells, or in any other manner, nor did these respondents, by said conveyances, obtain the right to in any manner control the management or business and operations of Deep Hole Drilling Corporation, and these respondents further allege that none of the creditors of the bankrupt corporation delivered materials to said bankrupt upon these respondents' personal credit and these respondents further allege that the bankrupt was

extended credit by creditors in the drilling of subsequent wells by the bankrupt and that said credit was so extended with the notice and knowledge of conveyances to these answering respondents of said [12] interest in the oil to be produced, saved and sold from well No. 1, and respondents further allege that any and all credit and/or materials and/or labor which was furnished to the bankrupt subsequent to said conveyances was done by the creditors voluntarily and that said creditors did not at any time rely upon the fact that said 12% interest did or did not belong to the bankrupt in so extending such credit or in furnishing labor and/or materials to the bankrupt;

### X.

Respondents allege that under the rule of property, as established by the highest Courts of the State of California, in the recent case of *Payne vs. Callahan*, reported in Volume 100, Cal. App., Decisions, p. 766, a hearing upon which case was denied by the Supreme Court, respondents acquired by the purchase of said 12% interest an overriding royalty by which Deep Hole Drilling Corporation conveyed to respondents 12% of its profit a prendre, which is an interest in real property and that thereupon these respondents became cotenants and solely cotenants, and not otherwise, with the lessee in and to said profit a prendre; that from and after the conveyance thereof to respondents the Deep Hole Drilling Corporation had no further right, title

and/or interest in and to said 12% interest which it could sell or dispose of, nor did the said Deep Hole Drilling Corporation have any interest therein or thereto which would be subject to any judicial writ or process; therefore said 12% interest is not a part or portion of the bankrupt's estate and as the creditors had, in many instances, actual notice, and in others, constructive notice of the outright conveyance of said 12% royalty interest to respondents prior to their extending any credit whatsoever to the bankrupt for the construction of additional wells to said well No. 1, neither said creditors nor the trustee are entitled to the moneys held on the books of the Standard Oil Company of California for the benefit of these answering respondents, nor in or to 12% of any oil which may hereafter be produced from said well No. 1; [13]

## XI.

That it would be inequitable, unjust and unfair under the circumstances to enter an order herein subjecting the property of these answering respondents to the claims of creditors of the bankrupt, thereby including the same as a part of the bankrupt's estate, particularly with respect to any and all claims which have arisen through the drilling of subsequent wells subsequently to the completion of said well No. 1, and the conveyance of said 12% interest to said respondents, and particularly as to any and all claims of the Howard Supply Company;



## XII.

These respondents further allege that the entering of an order in these summary proceedings for the taking of respondents' property for the benefit of the bankrupt's estate and the creditors thereof, would take such property without due process of law, and the entering of such an order in these proceedings would confiscate the property of these respondents for the benefit of said bankrupt's estate and said creditors in direct violation of the provisions of the Constitution of the United States and the property rights of these respondents protected thereby, particularly the Fifth Amendment and the Fourteenth Amendment thereto, contrary to the laws of property as established by the highest Courts of the State of California;

Wherefore, respondents pray that the Order to Show Cause herein be dismissed and that the relief prayed for be denied insofar as the same attempts to affect in any manner whatsoever the property rights of these respondents in and to said 12% of the oil and gas produced, saved and sold from Deep Hole Drilling Corporation's well No. 1, and for such other and further order as this Court shall deem meet, just and equitable in the premises and necessary to protect the right, title and interest of these respondents in and to their said property.

FLEMING & ROBBINS,

By C. S. TINSMAN,

Attorneys for Respondents,  
Consolidated Royalties, Inc., a  
corporation, and C. B. Callahan.

State of California,  
County of Los Angeles—ss.

E. W. Clark, being by me first duly sworn, deposes and says:

That Consolidated Royalties, Inc., is a corporation and that affiant is an officer thereof, to-wit, the Treasurer, and as such officer makes this verification for and on behalf of said corporation, one of the respondents in the above entitled action; that he has read the foregoing Answer of Respondents, Consolidated Royalties, Inc., a Corporation, and C. B. Callahan to Order to Show Cause and Petition Upon Which It Is Based and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters that he believes it to be true.

E. W. CLARK.

Subscribed and sworn to before me this 21st day of May, 1940.

(Seal)                      MARIE TREAIS,  
Notary Public in and for the County of Los Angeles, State of California. [15]

### EXHIBIT "A"

### ASSIGNMENT OF ROYALTY INTEREST OVERRIDING

Know All Men by These Presents, that

Whereas, Deep Hole Drilling Corporation, a corporation, is the owner and holder, by assignment,

of that certain Oil and Gas Lease dated September 30, 1938, by and between Henry C. Hopkins and Clarence V. Hopkins, as lessors, and Twin Oil Co., a California corporation, as lessee, insofar as the same pertains to the following described real property located in Los Angeles County, California, to-wit:

The East two (2) acres of the North 350.08 feet of Lot Fifty (50), Tract No. 15, in the County of Los Angeles, State of California, as per map recorded in Book 12, page 189 of Maps, in the office of the County Recorder of said County.

Except any portion of the above described property within the lines of Beacon Street, as shown on map of Tract No. 437, recorded in Book 14, page 162 of said Map records;

which said Assignment of Oil and Gas Lease was recorded on December 10, 1938, in Book 16207, page 354, Official Records of Los Angeles County, California; and

Whereas, said Deep Hole Drilling Corporation has completed a well upon said above described premises, known as Deep Hole Drilling Corporation Well No. 1.

Now, therefore, for and in consideration of the sum of Ten (\$10.00) Dollars, and other good and valuable consideration, receipt of which is hereby acknowledged, Deep Hole Drilling Corporation, a corporation, does hereby sell, assign, transfer and



set over unto Consolidated Royalties, Inc., a corporation, an overriding royalty interest of five (5%)—per cent. of the oil produced, saved and sold, and five (5%)—per cent. of the net proceeds received by the operator from the sale of all gas, [16] casinghead gas, and all gasoline produced, saved and sold from the above described premises, from and including March 1st, 1939, subject to all the terms, covenants and conditions of said above mentioned lease. Said royalty interest shall not be chargeable with any operating cost of the well or lease, and shall be subject only to its pro-rata proportion of any deductions made from the payment of landowners' royalty, pursuant to the terms of said above mentioned lease.

Monthly accounting shall be made by assignor to assignee for all oil, gas or other hydrocarbon substances produced, saved and sold from the above described premises on or before the twenty-fifth (25th) day of the succeeding calendar month.

Assignee shall have the same right to inspection of records, premises, logs and cores as is accorded to the Lessor in said Lease.

Assignor agrees that it will execute and deliver to Assignee all division orders directed to purchasers of oil, gas or other hydrocarbon substances produced, saved and sold from said well, necessary or required to enable the Assignee to receive direct from such purchasers moneys due him hereunder.

The said assignor hereby warrants that it is the owner of the interest herein conveyed, and that the



same is not subject to any encumbrances whatsoever.

The assignor hereby guarantees that it will not sell, assign transfer or convey its estate, or any interest therein, in the above described property without first making adequate provision for the protection of any interest holders, and submitting a copy of the assignment thereof to the Commissioner of Corporations of the State of California. No subsequent assignment hereof will be valid or binding on the original assignor until and unless a copy thereof is first given to said assignor.

In Witness Whereof, the assignor herein has executed [17] this assignment the 27th day of March, 1939.

DEEP HOLE DRILLING  
CORPORATION,

By L. WESTERHOLM,

President.

By CYRIL MOSS,

Secretary.

State of California,  
County of Los Angeles—ss.

On this 27th day of March, 1939, before me, the undersigned, a Notary Public in and for said County and State, personally appeared L. Westerholm, known to me to be the President, and Cyril Moss, known to me to be the Secretary, of the Deep Hole Drilling Corporation, the corporation that executed the within Instrument, known to me to be the per-

sons who executed the within Instrument on behalf of the corporation herein named, and acknowledged to me that such corporation executed the same.

Witness my hand and official seal.

[Notarial Seal] L. PENMAN,  
Notary Public in and for said County and State.

My commission expires Nov. 29, 1942.

State of California,  
County of Los Angeles—ss.

On this 28th day of March, A.D., 1939, before me, Ruth Batey Hughes, a Notary Public in and for said County and State, personally appeared L. Westerholm, known to me to be the President, and Cyril Moss, known to me to be the Secretary of the Deep Hole Drilling Corporation, the Corporation that executed the within Instrument, known to me to be the persons who executed the within instrument on behalf of the Corporation herein named, and acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Seal) RUTH BATEY HUGHES,  
Notary Public in and for said County and State.

My commission expires 3/10/43. [18]

## EXHIBIT "B"

March 29th, 1939

Standard Oil Company of California  
Standard Oil Building  
Los Angeles, California

Attention Mr. A. E. Smothers.

Gentlemen:

On March 7th, 1939, Deep Hole Drilling Corporation addressed a letter to you as follows:

"We hereby direct that you pay to Mr. C. B. Callahan, 815 Rives-Strong Building, Los Angeles, California, twelve per cent (12%) of the proceeds of oil which your company purchases from the Deep Hole Drilling Corporation's No. 1 Well, known as the "Hopkins" Lease, situated on the following described property, to-wit:

The East 2 acres of the East 5 acres of the North 350.08 feet of Lot 50, of Tract 15, as per map recorded in Book 12, Page 189 of Maps, in the office of the County Recorder of Los Angeles County, State of California.

This order shall become effective as of March 1st, 1939, and shall cover all oil purchased by you from and after March 1st, 1939. This order is irrevocable unless consented to by C. B. Callahan."

You Are Hereby Directed That in lieu of paying the 12% of the proceeds of the oil which your Company purchases from said well, as provided for in said letter, that you pay the same to

Consolidated Royalties, Inc.  
815 Rives-Strong Building,  
Los Angeles, California.

This order is irrevocable unless consented to by Consolidated Royalties, Inc.

Very truly yours,  
(Corporate Seal) DEEP HOLE DRILLING  
CORPORATION,

By L. WESTERHOLM,  
President.

By CYRIL MOSS,  
Secretary.

C. B. CALLAHAN. [19]

[Endorsed]: Filed May 23, 1940. Samuel W. McNabb, Referee.

Filed: Dec. 12, 1941, R. S. Zimmerman, Clerk.  
[20]

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[Title of District Court and Cause.]

STIPULATION OF FACTS UPON ORDER TO  
SHOW CAUSE DIRECTED TO CONSOLI-  
DATED ROYALTIES, INC., A CORPORA-  
TION, AND C. B. CALLAHAN, AND THE  
ISSUES RAISED BY THE PETITION  
AND ANSWER THERETO.

It Is Hereby Stipulated by and between Harry Ashton, Petitioner and Trustee in the above mat-



ter, and Respondents, Consolidated Royalties, Inc., a corporation, and C. B. Callahan, through their attorneys undersigned, that the following are the facts to be considered by the Referee in determining the issues raised by the Petition, the Order to Show Cause issued thereon under date of May 17, 1940, and the Answer to said petition and order to show cause filed by said Respondents.

It Is Further Stipulated that said Respondents, in submitting the issues upon this stipulation of facts, are reserving their objection to the jurisdiction of the Referee and of the Bankruptcy Court to summarily determine and adjudge title to the claimed ownership by Respondents of twelve per cent. (12%) of the oil produced from Deep Hole Well No. 1 and that this stipulation is made and entered into for the purpose of saving the time of Court and counsel and of expediting the hearing upon said matter. The facts with respect to this matter are as follows:

1. That under date of September 30, 1938, Henry C. Hopkins and Clarence V. Hopkins, as Lessors, entered into an Oil and Gas Lease with Twin Oil Company, a corporation, as Lessee, which lease in part covered the following described property, situate in the County of Los Angeles, State of California, to wit: [21]

The East 2 acres of the East 5 acres of the North 350.08 feet of Lot 50, Tract 15, as per map recorded in Book 12, Page 189 of Maps, in the office of the County Recorder of said County;

that said lease provided that the term thereof was for a definite number of years and so long thereafter as oil and/or gas should be produced therefrom in paying quantities; that thereafter the lessee's interest under said oil lease was assigned to Deep Hole Drilling Corporation, which Assignment was recorded on December 10, 1938, in Book 16207, Page 354 of Official Records in the office of the County Recorder of Los Angeles County, California.

2. That said Deep Hole Drilling Corporation drilled and completed its No. 1 Well on the above described property, which well was placed on production on February 5, 1939.

3. That under date of February 1, 1939, Deep Hole Drilling Corporation, as Seller, entered into an executory contract with Standard Oil Company of California, as Buyer, for the sale and purchase of all crude petroleum oil produced from the above described property. All deliveries thereof to be made from the tankage of Seller on said property into the pipeline of Buyer at which time title to said oil passed to Buyer.

4. That an application was filed by Deep Hole Drilling Corporation with the Department of Investments of the State of California, Corporation Department, on or before March 9, 1939, a copy of which application is attached hereto, marked Exhibit "A", and is by this reference made a part hereof, omitting, however, certain documents which

were attached thereto as exhibits and deemed immaterial to this matter, to wit,

Exhibit "A"—Leasehold agreements on Well No. 1

Exhibit "B"—Copy of Title Report on Well No. 1

Exhibit "D"—Map showing locations of Wells No. 1, 2 and 3.

5. That a permit was issued by the Commissioner [22] of Corporations on March 25, 1939, a copy of which permit is attached hereto, marked Exhibit "B" and is by this reference made a part hereof.

6. That pursuant to the authority granted by the aforesaid permit, Deep Hole Drilling Corporation did, on March 27, 1939, execute and deliver to Consolidated Royalties, Inc., a corporation, the document attached to Exhibit "A", marked Exhibit "C", and by this reference made a part hereof. That said Corporation did also execute and deliver to C. B. Callahan a conveyance identical in form with said Exhibit "C" attached to Exhibit "A", except that in each instance the blanks were filled in, 5% royalty interest being conveyed to Consolidated Royalties, Inc., and 7% royalty interest being conveyed to C. B. Callahan, and the same were duly executed, acknowledged, and delivered.

That as consideration for said conveyance, Consolidated Royalties, Inc., paid to Deep Hole Drilling Corporation the sum of \$4,750.00 cash, lawful money of the United States, and C. B. Callahan



paid to said Deep Hole Drilling Corporation the sum of \$6,650.00, lawful money of the United States, being \$950.00 for each one per cent (1%) royalty interest so conveyed, as authorized by said permit, to the respective Respondents.

7. That Deep Hole Drilling Corporation, pursuant to said permit, executed and delivered an option agreement to said Respondents, a copy of which Option Agreement is attached to Exhibit "A" marked Exhibit "I", and by this reference made a part hereof. That said options were never exercised by Respondents. Well No. 2 was abandoned and Well No. 3 was never drilled.

8. That said conveyances were recorded by Respondents in the office of the County Recorder of Los Angeles County, California, on March 30, 1939. That at the time said conveyances were made to Respondents, Deep Hole Drilling Corporation was solvent. That there were only approximately Four Thousand Dollars in unpaid obligations (Now provable in these proceedings) then unpaid in the drilling of Well No. 1, with the exception of the [23] claim of Howard Supply Company. That as part of said transaction, Howard Supply Company executed and delivered to the Commissioner of Corporations the letter which is attached to Exhibit "A", marked Exhibit "H", and by this reference made a part hereof.

9. That on March 29, 1939, Deep Hole Drilling Corporation executed and delivered to Standard Oil Company of California a Division Order, a

copy of which is attached hereto, marked Exhibit "C", and by this reference made a part hereof. That said Division Order was accepted by said Standard Oil Company. That said corporation at all times thereafter paid to Consolidated Royalties, Inc., said 12% of the proceeds of the sale of said oil, through the month of August, 1939, but has made no payment thereof since September 1, 1939. That there is now held by said Standard Oil Company and undisbursed, pursuant to said conveyances, through April 30, 1940, the total sum of \$846.08. That insofar as the 7% royalty interest of C. B. Callahan is concerned, Consolidated Royalties, Inc., has acted as his agent for the purpose of collecting said royalty and has no right, title or interest therein or thereto.

10. That on May 15, 1940, Respondents filed an action against said Standard Oil Company as the only Defendant in the Municipal Court of the City of Los Angeles, County of Los Angeles, State of California, to recover the said sum of \$846.08. No application for permission to file said action against Standard Oil Company was made by Respondents to the Bankruptcy Court. On May 17, 1940, the Trustee obtained a restraining order against Respondents, restraining them from prosecution of any action to recover said claimed royalties.

11. That in addition to the obligations incurred in the drilling of Well No. 1, the Bankrupt's obligations are substantially only those incurred in the drilling of Well No. 2 subsequent to the acquisition

by Respondents of said 12% interest in Well No. 1, which was then on production. It may be assumed for the purpose of this matter only that the assets of the Bankrupt in Well No. 1 are [24] in excess of \$4,000.00, however, the actual value of such assets cannot be determined until final disposition of the estate.

12. Said Respondents did not at any time, nor have they ever, participated in the conduct, management or business of Deep Hole Drilling Corporation. The Trustee has not shown that any Creditor of the Bankrupt delivered materials to the Bankrupt, or performed labor for the Bankrupt upon Respondents' personal credit.

13. That Mr. Clark, Treasurer of Consolidated Royalties, Inc., a corporation, would testify that at the time of the purchase of said 12% royalty interest, Respondents were informed by Deep Hole Drilling Corporation, through Mr. Argood, its agent in negotiating the conveyance of such interest to Respondents, that the proceeds derived from the sale of the royalty interest would be used to discharge the obligations outstanding against Well No. 1, with the exception of the claim of Howard Supply Company; that the 12% royalty interest was purchased in Deep Hole Well No. 1 relying upon the statement of Mr. Argood and the letter from the Howard Supply Company above mentioned. (Note: The Trustee believes that the word "relying" used in this last sentence is a conclusion and objects to its use for this reason.)



14. That Deep Hole Drilling Corporation filed a petition under the provisions of Chapter XI of the national Bankruptcy Act on September 25, 1939, and petitioner, Harry Ashton, was appointed Receiver for said corporation in such proceedings. That thereafter, and on April 22, 1940, the corporation was adjudicated a Bankrupt, pursuant to said act and said Harry Ashton was appointed Trustee of the Estate of said Bankrupt and is now the duly appointed, qualified and acting trustee of said estate.

Dated this 24th day of June, 1940.

GEORGE T. GOGGIN and  
RUSSELL B. SEYMOUR  
By RUSSELL B. SEYMOUR,  
Attorneys for Trustee—Harry  
Ashton.

FLEMING & ROBBINS,  
By C. S. TINSMAN,  
Attorneys for Respondents, Con-  
solidated Royalties, Inc., a  
poration, and C. B. Callahan.

[25]



EXHIBIT "A"

Before the Department of Investment Division of  
Corporations of the State of California.

In the Matter of the Application of  
DEEP HOLE DRILLING CORPORATION  
for a permit authorizing it to issue securities.

APPLICATION FOR PERMIT TO ISSUE  
SECURITIES

Application is hereby made by Deep Hole Drilling Corporation for permission to issue securities, and in support thereof the following facts are submitted:

1. Applicant is a corporation duly organized and existing under and by virtue of the laws of the State of California, duly qualified to transact business in the County of Los Angeles. Heretofore applicant has filed with the Division of Corporations its application to issue capital stock, and reference is hereby made thereto.

2. Applicant is the owner, by assignment, of an Oil and Gas Lease dated the 30th day of September, 1938, by and between Henry C. Hopkins and Clarence V. Hopkins, as lessors, and Twin Oil Co., a California corporation, as lessee, insofar as the same pertains to the following described premises located in the County of Los Angeles, State of California, to wit:

The East two (2) acres of the North 350.08 feet of Lot Fifty (50), Tract No. 15, as per map recorded in Book 12, page 189 of Maps, in the office of the County Recorder of said County, Except any portion of the above described property within the lines of Beacon Street, as shown on map of Tract No. 437, recorded in Book 14, page 162 of Map Records,

which said Assignment of Oil and Gas Lease to applicant was recorded on December 10, 1938, in Book 16207, page 354, Official Records of Los Angeles County, California. [26]

3. Applicant has drilled and completed its No. 1 well upon the above described real property, which said well was placed on production on February 5, 1939; that said well is set with 7" casing at 4800 feet, with 367 feet of 5½" perforated liner, and is now producing approximately 400 barrels of oil per day with 250 pounds tubing pressure.

4. Applicant proposes to sell and issue to C. B. Callahan and/or Consolidated Royalties, Inc., or either of them, 12% royalty interest in said No. 1 well, in accordance with form of assignment attached hereto, made a part hereof, and marked Exhibit "C", at and for the selling price of \$950.00 for each one per cent; and said purchasers shall receive payment direct from the purchasers of the oil and gas.

5. Applicant further proposes to enter into an Option Agreement with C. B. Callahan and/or Con-

solidated Royalties, Inc., whereby they, or either of them, are given an option to purchase all or any part of a 15% royalty interest in the company's No. 2 well, situate upon the

West one-half ( $W\frac{1}{2}$ ) of Lot Sixty-three (63), Tract No. 15, in the County of Los Angeles, State of California, as per map recorded in Book 12, page 189 of Maps, Records of the County Recorder of Los Angeles County, California,

at and for the selling price of \$850.00 for each one per cent; and also to enter into an Option Agreement with C. B. Callahan and/or Consolidated Royalties, Inc., wherein they are given the option to purchase all or any part of a 15% royalty interest in the company's No. 3 well, situate upon the

East one-half ( $E\frac{1}{2}$ ) of said Lot Sixty-three (63)

at and for the selling price of \$850.00 for each one per cent. Applicant has agreed with said C. B. Callahan and Consolidated Royalties, Inc., that it will not issue, or cause to be issued, overriding royalty interests of more than 12% in its Well No. 1, and not more than overriding royalty interests of 15% each in its said Wells Nos. 2 and 3. Applicant's No. 2 well is now drilling at a depth of 3900 feet, and said applicant expects to have the same completed [27] within two weeks from date.

6. That attached hereto and made a part hereof are the following exhibits:



Exhibit "A"—Leasehold Agreements on Well No. 1

Exhibit "B"—Copy of Title Report on Well No. 1

Exhibit "C"—Proposed form of Royalty Assignment

Exhibit "D"—Map showing locations of wells No. 1, 2 and 3

Exhibit "E"—Copy of Minutes of Directors Meeting and resolution authorizing the filing of this Application.

Exhibit "F"—Statement of Production, Well No. 1

Exhibit "G"—Statement of Assets and Liabilities

Exhibit "H"—Letter signed by Howard Supply Company (creditor of applicant) agreeing not to interfere with payment of royalties.

Exhibit "I"—Form of proposed Option Agreement.

Wherefore, applicant prays that it be given and granted authority to issue and sell to C. B. Callahan and/or Consolidated Royalties, Inc., or either of them, a twelve (12%) per cent royalty interest in its No. 1 well, at and for the selling price of Nine Hundred Fifty (\$950.00) dollars per each one (1%) per cent. to net the corporation the full sell-



ing price therefor; and further, for authority to enter into the option agreements herein referred to.

**DEEP HOLE DRILLING**

**CORPORATION,**

**By L. WESTERHOLM,**

**President.**

**Applicant.**

**HANNA AND MORTON,**

**By CHESTER F. DOLLEY,**

**Attorneys for Applicant. [28]**

State of California,

County of Los Angeles—ss.

L. Westerholm, being first duly sworn, desposes and says:

That he is President of Deep Hole Drilling Corporation, a corporation, applicant herein, and makes this verification for and on behalf of said corporation; that he has read the foregoing Application and knows the contents thereof, and that the statements contained therein are true of his own knowledge.

**L. WESTERHOLM.**

Subscribed and sworn to before me this 9th day of March, 1939.

(Seal)

**ELSIE H. MACDONELL,**

Notary Public in and for said County and State.

**[29]**

## EXHIBIT "C"

ASSIGNMENT OF ROYALTY INTEREST  
OVERRIDING

Know All Men by These Presents, that

Whereas, Deep Hole Drilling Corporation, a corporation, is the owner and holder, by assignment, of that certain oil and Gas Lease dated September 30, 1938, by and between Henry C. Hopkins and Clarence V. Hopkins, as lessors, and Twin Oil Co., a California corporation, as lessee, insofar as the same pertains to the following described real property located in Los Angeles County, California, to wit:

The West two (2) acres of the North 350.08 feet of Lot Fifty (50), Tract No. 15, in the County of Los Angeles, State of California, as per map recorded in Book 12, Page 189 of Maps, in the office of the County Recorder of said County,

Except any portion of the above described property within the lines of Beacon Street, as shown on map of Tract No. 437, recorded in Book 14, page 162 of said Map Records;

which said Assignment of Oil and Gas Lease was recorded on December 10, 1938, in Book 16207, Page 354, Official Records of Los Angeles County, California; and

Whereas, said Deep Hole Drilling Corporation has completed a well upon said above described premises, known as Deep Hole Drilling Corporation Well No. 1,

Now, Therefore, for and in consideration of the sum of Ten (\$10.00) Dollars, and other good and valuable consideration, receipt of which is hereby acknowledged, Deep Hole Drilling Corporation, a corporation, does hereby sell, assign, transfer and set over unto

An overriding royalty interest of ..... per cent. of the oil produced, saved and sold, and ..... per cent. of the net proceeds received by the operator from the sale of all gas [30] casinghead gas, and all gasoline produced, saved and sold from the above described premises, from and including March 31st, 1939, subject to all the terms, covenants and conditions of said above mentioned lease. Said royalty interest shall not be chargeable with any operating cost of the well or lease, and shall be subject only to its pro-rata proportion of any deductions made from the payment of landowners' royalty, pursuant to the terms of said above mentioned lease.

Monthly accountings shall be made by assignor to assignee for all oil, gas or other hydrocarbon substances produced, saved and sold from the above described premises on or before the twenty-fifth (25th) day of the succeeding calendar month.

Assignee shall have the same right to inspection of records, premises, logs and cores as is accorded to the lessor in said lease.

Assignor agrees that it will execute and deliver to Assignee all division orders directed to purchasers of oil, gas or other hydrocarbon substances produced, saved and sold from said well, necessary

or required to enable the Assignee to receive direct from such purchasers moneys due him hereunder.

The said assignor hereby warrants that it is the owner of the interest herein conveyed, and that the same is not subject to any encumbrances whatsoever.

The assignor hereby guarantees that it will not sell, assign, transfer or convey its estate, or any interest therein, in the above described property without first making adequate provision for the protection of any interest holders, and submitting a copy of the assignment thereof to the Commissioner of Corporations of the State of California. No subsequent assignment hereof will be valid or binding on the original assignor until and unless a copy thereof is first given to said assignor.

In Witness Whereof, the assignor herein has executed [31] this assignment the ..... day of ....., 1939.

DEEP HOLE DRILLING  
CORPORATION,

By .....

President.

By .....

Secretary. [32]



EXHIBIT "E"

MINUTES OF SPECIAL MEETING OF THE  
BOARD OF DIRECTORS OF DEEP HOLE  
DRILLING CORPORATION

A special Meeting of the Board of Directors of Deep Hole Drilling Corporation was held at Los Angeles, California, on the 9th day of March, 1939, at the hour of 10 o'clock A. M., pursuant to written waiver of notice thereof and consent thereto by all of the directors of the company. The following directors were present:

L. Westerholm

Cyril Moss.

Mr. Westerholm acted as chairman of the meeting, and Mr. Moss as Secretary of the meeting.

On motion duly made, seconded and carried, the following resolution was adopted:

Resolved: That this corporation apply to the Division of Corporations of the State of California for permit authorizing it to issue and sell to C. B. Callahan and/or Consolidated Royalties, Inc., a corporation, or either of them, a 12% royalty interest in the company's No. 1 well, at and for the selling price of \$950.00 per each 1%, to net the corporation the full selling price therefor; and further, for authority to enter into an option agreement with C. B. Callahan and/or Consolidated Royalties, Inc. whereby they, or either of them, are given an

option to purchase a 15% interest in the company's No. 2 well, situate upon the West half of Lot 63, Tract 15, at and for the selling price of \$850.00 per each 1%, and for authority to enter into an option agreement with C. B. Callahan and/or Consolidated Royalties, Inc. whereby they, or either of them, are given an option to purchase a 15% interest in the company's No. 3 well, situate upon the East half of said Lot 63, at and for the selling price of \$850.00 for each 1%.

There being no further business to come before the meeting, the same was upon motion duly made, seconded and carried, adjourned.

CYRIL MOSS

Secretary.

Approved:

L. WESTERHOLM

President. [33]

## EXHIBIT "F"

Deep Hole Drilling Corporation

## DAILY PRODUCTION REPORT

## DEEP HOLE #1

2/7/39.....	404.3 Bbls
2/8/39.....	489.6 "
2/9/39.....	498.6 "
10 .....	495.6 "
11 .....	489.2 "
12 .....	439.5 "
13 .....	449.9 "
14 .....	445.0 "
15 .....	412.5 "
16 .....	258.2 "
17 .....	400.0 "
18 .....	408.4 "
19 .....	407.7 "
20 .....	383.0 "
21 .....	395.9 "
22 .....	394.0 "
23 .....	427.6 "
24 .....	380.2 "
25 .....	382.5 "
26 .....	393.8 "
27 .....	397.9 "
28 .....	394.2 "
3/1/39.....	378.3 "
3/2/39.....	381.1 "
3/3/39.....	369.9 "
3/4/39.....	347.2 "
3/5/39.....	340.2 "
3/6/39.....	330.2 "
3/7/39.....	371.2 "

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11,665.7 Bbls

## SHIPMENTS

Previous to time Standard Oil Co. had pipe line connected to our tanks, oil shipped as follows:

2/ 8/39—Mercury Petroleum Corporation.....	852.40 bbls
2/ 9/39—Mercury .....	533.50 “
2/12/39— “ .....	865.08 “
2/14/39— “ .....	857.68 “
2/15/39— “ .....	653.95 “

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Total to Mercury.....	3,762.69 “
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## Shipments to Standard Oil Company:

Our tanks are 1000 bbl tanks and in shipping, the oil was drawn from the tanks to the usual depth, showing each shipment as approximately 900 bbls:

2/18/39.....	about 900 bbls
2/21/39.....	about 900 bbls
2/23/39.....	about 900 bbls
2/25/39.....	about 900 bbls
2/28/39.....	about 900 bbls
3/ 2/39.....	about 900 bbls
3/ 4/39.....	about 900 bbls

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Approx. 6,300 “
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3/ 7/39.....	900 “
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Making a total of 7,200 bbls more or less shipped to Standard Oil Company to date of 3/7/39, incl.



EXHIBIT "G"

Deep Hole Drilling Corporation

STATEMENT OF ASSETS & LIABILITIES

March 6, 1939

Assets

Cash in Bank.....	6,650.00	
Accounts Receivable .....	8,000.00	
(Standard Oil Co.)		
Derrick Equipment, Tanks, Tubular		
Goods—No. 1 Well.....	17,038.18	
Cost of Lease—No. 1 Well.....	3,500.00	
Interest in No. 1 Well		
(78% @ \$1500.00).....	117,000.00	152,188.18
		<hr/>
Cost to date—No. 2 Well.....	10,000.00	
Cost 5-acres offset lease to No. 1 Well	2,650.00	12,650.00
		<hr/>
Total Assets .....		164,838.18
		<hr/>

Liabilities

Open Accounts Payable—No. 1.....	1,652.76	
(not Yet Due)		
Contracts Payable—No. 1 Well.....	2,309.24	
(30-60-90 Days)		
Contract Payable No. 1 Well Howard		
Supply Co. (Payable only from 40%		
of oil produced & sold).....	12,864.35	16,826.35
		<hr/>
Open Accts. Payable—Not Yet Due—		
No. 2 Well (Approximately).....		2,500.00
		<hr/>
Total Liabilities .....		19,326.35
Estimated Net Worth.....		145,511.83
		<hr/>

Total Liabilities & Estimated Net Worth 164,838.18

Note: #1 Well completed Feb. 6, 1939, and flowing steadily at the rate of approximately 400 barrels per day.  
 #2 Well now drilling below 3,600 feet in oil sand with every indication of being brought in an excellent well.

## EXHIBIT "H"

Letter Head of Howard Supply Company  
Los Angeles, California.

March 8, 1939

Division of Corporations,  
State of California,  
State Building,  
Los Angeles, California.

Gentlemen:

This is to advise you that Howard Supply Company, as a creditor of Deep Hole Drilling Co., will not in anywise whatsoever interfere with the payment of royalties to be issued by Deep Hole Drilling Co. on its Well No. 1 situated upon the following described real property, to wit:

The East 2 acres of the North 350.08 feet of Lot 50 of Tract No. 15, in the County of Los Angeles, State of California, as per map recorded in Book 12, Page 189, of Maps, in the office of the County Recorder of said County;

Except any portion of the above described property within the lines of Beacon Street, as shown on map of Tract No. 437, recorded in Book 14, Page 162 of said Map Records.

We have been advised by Deep Hole Drilling Co. that it is applying to the Division of Corporations for a permit authorizing it to issue 12% royalty in its No. 1 well, and we will not, as a creditor or otherwise, interfere in any manner what-

soever with the payment of said 12% royalty interest.

Very truly yours,

HOWARD SUPPLY COMPANY

By J. P. MOSELEY

Secretary-Treasurer

JPM/eg [36]

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EXHIBIT "I"

OPTION AGREEMENT

This Agreement made and entered into this 27th day of March, 1939, by and between Deep Hole Drilling Corporation, a corporation, hereinafter designated as First Party, and C. B. Callahan and Consolidated Royalties, Inc., a corporation, hereinafter designated as Second Parties,

Witnesseth:

For and in consideration of the sum of One (\$1.00) Dollar, paid by Second Parties to First Party, receipt of which is hereby acknowledged, said First Party does hereby give and grant unto Second Parties, or either of them, their heirs, successors or assigns, the exclusive right or privilege of purchasing all or any part of the following described oil royalties:

Fifteen (15%) royalty interest in Deep Hole Drilling Corporation Well No. 2, situate upon the following described real property, to wit:

The West half (W $\frac{1}{2}$ ) of Lot 63, Tract 15, in the County of Los Angeles, State of Cali-

fornia, as per map recorded in Book 12, page 189 of Maps, Records of the County Recorder of said County;

Fifteen (15%) royalty interest in Deep Hole Drilling Corporation Well No. 3, situate upon the following described real property, to wit:

The East half ( $E\frac{1}{2}$ ) of Lot 63, Tract 15, in the County of Los Angeles, State of California, as per map recorded in Book 12, Page 189 of Maps, Records of the County Recorder of said County.

The option price for said royalties is Eight Hundred Fifty (\$850.00) Dollars for each one per cent, and upon election to purchase by Second Parties, or either of them, of all or any amount of said royalties, said sum of Eight Hundred Fifty (\$850.00) Dollars per each one per cent shall be paid upon said election, which election shall expire five (5) days after the company's No. 2 well is placed upon production. That said well shall be deemed [37] placed upon production when the oil from said well has been turned into the tanks situated upon said well.

Said election upon the company's No. 3 well shall expire ten (10) days after the company's No. 3 well is placed upon production. That said well shall be deemed placed upon production when the oil from said well has been turned into the tanks situated upon said well.



Notice of Election to purchase hereunder by said Second Parties, or either of them, shall be in writing, and shall be delivered to First Party at 1006 Garfield Bldg., 403 West 8th Street Los Angeles, California.

That the form of royalty assignment to be used hereunder shall be substantially the same form as used by First Party in the issuance of royalties to Second Parties in its No. 1 well, an exact copy of which said assignment is attached hereto, and marked Exhibit "A".

In witness whereof, said parties have caused this agreement to be executed on the day and year first hereinabove written.

(Seal)

DEEP HOLE DRILLING CORPO-  
RATION

By L. WESTERHOLM

President

By CYRIL MOSS

Secretary

First Party.

(Seal)

C. B. CALLAHAN

CONSOLIDATED ROYALTIES,  
INC.

By W. R. WHEAT

President

By E. W. CLARK

Secretary.

Second Parties. [38]

## EXHIBIT "B"

Before the Department of Investment  
Division of Corporations of the  
State of California

## PERMIT

In the Matter of the application of  
DEEP HOLE DRILLING CORPORATION  
for a permit authorizing it to sell  
and issue its securities

File No. 68781LA

Receipt No. LA 5169

This Permit Does Not Constitute a Recommendation or Endorsement of the Securities Permitted to Be Issued, But Is Permissive Only

Deep Hole Drilling Corporation, A California corporation, is hereby authorized to sell and issue its securities as hereinbelow set forth:

1. To sell and issue to C. B. Callahan and Consolidated Royalties, Inc. an aggregate of not to exceed, to either or both of them, 12 one per cent participating royalty interests, without maintenance charge, of all oil, gas and other hydrocarbon substances produced and saved from the well designated as Well No. 1, situated upon the premises described in the application, at and for the price of \$950.00 for each one per cent participating royalty interest, cash, lawful money of the United States, for the uses and purposes recited in the appli-

cation, and so as to net applicant the full amount of the selling price thereof, upon the condition that the applicant shall execute and deliver as evidence of ownership thereof a royalty assignment or assignments in the form filed with the application.

2. To issue to C. B. Callahan and Consolidated Royalties, Inc. an option or options in the form filed with the application as Exhibit "I", evidencing the right to purchase 15 one per cent participating royalty interests of all oil, gas and other hydrocarbon substances produced and saved from the wells designated as Wells Nos. 2 and 3, situated upon the premises described in the application, for the considerations recited therein. [39]

This permit is issued upon each of the following conditions:

(a) That none of the options authorized by Paragraph 2 hereof shall be sold or issued unless and until the applicant first shall have selected an escrow holder and said escrow holder shall have been first approved in writing by the Commissioner of Corporations; that, when issued, all certificates evidencing any of said options shall be forthwith deposited with said escrow holder, to be held as an escrow pending the further written order of the said Commissioner; that the receipt of said escrow holder

for said certificates shall be filed with said Commissioner; and that the owner or persons entitled to said options shall not consummate a sale or transfer of said options, or any interest therein, until the written consent of said Commissioner shall have been obtained so to do.

(b) That unless revoked, suspended or extended by alteration or amendment, upon application filed on or before the date of expiration specified in this condition and upon such terms and conditions as the Commissioner may deem proper, all authority to sell securities under issuance clauses 1 and 2 of this permit shall terminate and expire on the 24th day of June, 1939. All other issuance clauses and/or conditions of this permit shall remain in full force and effect until revoked, suspended, altered or amended by appropriate order of the Commissioner.

Dated: Los Angeles, California, March 25, 1939.

(Seal)

EDWIN M. DAUGHERTY

Commissioner of Corporations

By J. A. HAHN

J. A. HAHN

Deputy

HVW:DG [40]



EXHIBIT "C"

March 29th, 1939

Standard Oil Company of California  
Standard Oil Building  
Los Angeles, California

Attention Mr. A. E. Smothers

Gentlemen:

On March 7th 1939, Deep Hole Drilling Corporation addressed a letter to you as follows:

"We hereby direct that you pay to Mr. C. B. Callahan, 815 Rives-Strong Building, Los Angeles, California, twelve per cent (12%) of the proceeds of oil which your company purchases from the Deep Hole Drilling Corporation's No. 1 Well, known as the "Hopkins" Lease, situated on the following described property, to wit:

The East 2 acres of the East 5 acres of the North 350.08 feet of Lot 50, of Tract 15, as per map recorded in Book 12, Page 189 of Maps, in the office of the County Recorder of Los Angeles County, State of California.

This order shall become effective as of March 1st 1939, and shall cover all oil purchased by you from and after March 1st 1939. This order is irrevocable unless consented to by C. B. Callahan."

You are hereby directed that in lieu of paying the 12% of the proceeds of the oil which your Com-

pany purchases from said well, as provided for in said letter, that you pay the same to

Consolidated Royalties, Inc.  
815 Rives-Strong Building  
Los Angeles California

This order is irrevocable unless consented to by Consolidated Royalties, Inc.

Very truly yours,  
(Seal)

DEEP HOLE DRILLING CORPO-  
RATION,  
By L. WESTERHOLM  
President  
By CYRIL MOSS  
Secretary  
C. B. CALLAHAN [41]

[Endorsed]: Filed Jun. 25, 1940. Samuel W. McNabb, Referee. Filed Dec. 12, 1941. R. S. Zimmerman, Clerk. [42]

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[Title of District Court and Cause.]

REFEREE'S MEMO OPINION RE INTER-  
ESTS OF CONSOLIDATED ROYALTIES,  
INC., AND C. B. CALLAHAN.

Claimants on March 27, 1939, purchased 12½ per cent royalty interest of the oil produced, saved and sold, etc., from a certain well known as "Deep Hole No. 1". In order to complete this well, general

trade creditors furnished supplies of the value of about \$4,000, which claims have never been paid and which created provable claims in this estate. After finishing Deep Hole No. 1 well, the bankrupt proceeded to drill a second well, in which enterprise a large deficiency arose, and the question arising here is what is the status of the interest of Consolidated Royalties and C. B. Callahan insofar as other creditors are concerned.

I am of the opinion that the claimants here are co-adventurers with the bankrupt insofar as Well No. 1 is concerned, and that these claims should be subordinated to the extent of claims of those who furnished supplies or other commodities for the completion of Well No. 1; that claimants should not be subordinated to the general claims arising from the drilling of Well No. 2, or otherwise, other than those in No. 1. No subordination to any claim of Howard Supply Company against Well No. 1 is proper for the reason that at the time of the issuance of the permit by the Corporation Commissioner the Howard Supply Company expressly waived any such right of subordination. The Court is not advised as to the exact amount of the claims, which, under this ruling will have priority over claimants, but if not agreed to by the parties, further testimony may be taken regarding same. [43]

Counsel for the Trustee will prepare order in accordance with the foregoing decision.

Dated: June 26, 1940.

S. W. McNABB

Referee.

[Endorsed]: Filed Dec. 12, 1941. R. S. Zimmerman, Clerk. [44]

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[Title of District Court and Cause.]

STIPULATION THAT REFEREE HUBERT F.  
LAUGHARN MAY SIGN ORDER.

It is stipulated by Raphael Dechter and Russell B. Seymour, as attorneys for Harry Ashton, Trustee Samuel W. McNabb in respect to the rights Consolidated Royalties, Inc. and C. B. Callahan, respondents herein, as follows:

Whereas, hearings were had before former Referee Samuel W. McNabb in respect to the rights of the parties hereto in and to a certain oil well commonly known as Deep Hole Well No. 1, located at Torrance, California, on property described as follows, to-wit:

East 2 acres of the East 5 acres of the North  
350.08 feet of Lot 50, Tract 15, Los Angeles  
County, State of California,

and in and to the production and the proceeds from such production from said oil well, and in and to the proceeds of said production then and now being held by Standard Oil Company of California, and after said hearings and the submission of authori-



ties, said referee orally authorized certain findings of fact and conclusions of law and orders based thereon, but prior to the signing of any written findings or orders, said referee passed away, and

Whereas, Referee Hubert F. Laugharn is now the duly qualified and acting referee in bankruptcy in place of said former Referee McNabb, and

Whereas, the parties hereto have agreed on the form of said [45] findings and order (same being filed herewith) now, therefore,

It is stipulated that said Referee Hubert F. Laugharn may sign said findings and order and to the same effect as if same were signed by said Referee Samuel W. McNabb; and, further, that said Referee Laugharn may prepare, execute, and file such additional papers, referee's certificate, etc. as may be required or convenient in the event of any review or appeal of or from said findings or order.

Dated this 10 day of February, 1941.

RAPHAEL DECHTER and

RUSSELL B. SEYMOUR

By RUSSELL B. SEYMOUR

Attorneys for the Trustee.

FLEMING & ROBBINS

By C. S. TINSMAN

Attorneys for the respondents.

[Endorsed]: Filed Nov. 26, 1941. Hubert F. Laugharn, Referee. Filed Dec. 12, 1941. R. S. Zimmerman, Clerk. [46]

[Title of District Court and Cause.]

ORDER RE INTERESTS OF CONSOLIDATED  
ROYALTIES, INC., AND C. B. CALLAHAN  
IN OIL WELL AND PROCEEDS OF PRO-  
DUCTION.

Harry Ashton, trustee herein, having filed a petition for an order to show cause directed to Consolidated Royalties, Inc., and C. B. Callahan, among others, to show cause, if any there be, why a further order should not be made in respect to the rights of said persons in and to a certain oil well commonly known as Deep Hole Well #1 located at Torrance, California, on property described as follows, to-wit:

East 2 acres of the East 5 acres of the North  
350.08 feet of Lot 50, Tract 15, Los Angeles  
County, State of California,

and in and to the production and the proceeds from such production from said oil wells, and in and to the proceeds of said production then and now being held by Standard Oil Company of California, and said matter having duly come on for hearing, Fleming & Robbins appearing on behalf of said respondents, and Raphael Dechter (George T. Goggin of counsel) and Russell B. Seymour appearing on behalf of said trustee, and evidence having been adduced and a stipulation of facts having been filed with the undersigned referee, and briefs having been filed, and the matter submitted to the referee for his findings and orders, now therefore, the court finds as follows, to-wit:

1. That the debtor filed its petition under the provisions of Chapter XI of the Bankruptcy Act of September 23, 1939, and Harry Ashton was appointed receiver in such proceedings; [47] that thereafter on April 22, 1940, the debtor was adjudicated a bankrupt and said Harry Ashton was appointed, trustee of the estate of said bankrupt and now is the duly appointed, qualified and acting trustee of said estate.

2. That at all times since the filing of said petition under Chapter XI the oil well and oil produced therefrom was in the physical possession of the said receiver, and, upon his qualification, of the said trustee, and was operated by said trustee and receiver.

3. That on or about December 10th, 1938, by mesne assignment, the bankrupt became the sub-lessee by virtue of the assignment of an oil and gas lease recorded December 10, 1938, Book 16207, Page 354 of Official Records in the Office of the County Recorder, Los Angeles County, and commenced the drilling of an oil and gas well on said premises, which well was placed on production February 5th, 1939.

4. That the cost of the drilling of said oil well has not been paid in full by said bankrupt and there is, at this time, approximately \$4000.00 of indebtedness arising from said drilling, which indebtedness is provable in these proceedings, exclusive of claim of Howard Supply Company.

5. That under date of February 1st, 1939, the bankrupt entered into an executory contract with



Standard Oil Company of California as buyer, for the sale and purchase of all crude oil produced from the said well, delivery to be made at the pipe line of the buyer; that at all times since the date of said agreement, the Standard Oil Company of California has been purchasing, and is now purchasing, the oil produced from said well.

6. That on or about March 9, 1939, the bankrupt applied to the Department of Investments of the State of California, [48] Corporation Department, for authority to sell to the respondents 12% royalty interest in said well at the price of \$950.00 for each 1%, and for further authority to enter into an option agreement with said respondents whereby they could purchase all or any part of a 15% royalty interest in a second well of the bankrupt known as Deep Hole Well #2, and a further option agreement whereby the respondent could purchase all or any part of a 15% royalty interest in a third well of the bankrupt commonly known as Deep Hole Well #3, said wells #2 and #3 to be located on nearby property.

7. That on or about March 25th, 1939, a permit was issued by the Department of Investments authorizing the bankrupt to sell and issue to C. B. Callahan and Consolidated Royalties, Inc., an aggregate of not to exceed to either or both of them twelve 1% participating royalty interests without maintenance charge and authorizing the bankrupt to execute and deliver as evidence of the ownership thereof a royalty assignment or assignments



in the form filed with the application; copies of said permit and of said royalty assignment are attached to the Stipulation of Facts.

8. That thereafter the bankrupt did, on March 27th, 1939, execute and deliver to the respondents assignments of 12% interest in and to said well #1, which interests were referred to as "overriding royalty interests"; that payment was made by the respondents to the bankrupt at the rate prescribed in the permit to-wit: the total sum of \$11,400.00. In addition, the bankrupt executed the option referred to in said permit which however, were never exercised by said respondents, said well #2 being abandoned and said well #3 never being drilled. The conveyances of said royalty interests were recorded in the office of the County Recorder of Los Angeles County, California, on March 30, 1939. [49]

9. That the bankrupt, on March 29, 1939, executed and delivered to said Standard Oil Company of California, a Division Order whereby that company was directed to pay to the respondents 12% of the proceeds of the sale of oil from the well, which 12% was paid to the respondents through the month of August, 1939; that no payments have been made since September 1st, 1939; that there is now in the hands of Standard Oil Company of California, and undisbursed, being the proceeds of said 12% up to April 30th, 1940, the total sum of \$846.08.

10. That on May 15, 1940, respondents filed an action against said Standard Oil Company of Cali-

fornia for the recovery of said sum of \$846.08; that no permission was granted by the Bankruptcy Court for authority to sue said Standard Oil Company.

11. That on May 17, 1940, the undersigned Referee issued a restraining order against respondents for prosecuting said Municipal Court action, pending further order of the Court.

12. That in addition to the \$4,000.00 in unpaid obligations incurred in drilling said Well No. 1, the substantial balance of the provable obligations of the bankrupt estate are the claims of the Howard Supply Company and other claims resulting from the drilling of Well No. 2 subsequent to the acquisition by respondents of their said 12% royalty interests in Well No. 1.

13. That the respondents did not, at any time, participate in the conduct, management or business of the bankrupt. The trustee has not shown that any creditor of the bankrupt delivered materials to the bankrupt or performed labor for the bankrupt upon respondents' personal credit.

14. That the trustee does not have assets or funds sufficient to pay in full the claims of creditors arising from the drilling of said wells #1 and #2, or either of them, [50]

15. That prior to the purchase of said percents by respondents, Howard Supply Company, a corporation, and a substantial creditor herein, agreed in writing that it would not interfere with the rights of respondents in and to said 12% of the proceeds therefrom.

## CONCLUSIONS OF LAW

1. That the rights and interests of said respondents in and to the oil produced, saved and sold and in and to the net proceeds received from the sale of all gas, casinghead gas and all gasoline produced, saved and sold from said Well No. 1 are subject and subordinate to the rights and interests of the trustee to the extent of \$4,000.00, being the indebtedness incurred and now unpaid in the drilling of said well prior to the purchase by respondents of their interest in said well, with the exception of the claim of Howard Supply Company.

2. That the proceeds from said 12%, including all proceeds after April 30, 1940, in addition to said sum of \$846.08 in the hands of said Standard Oil Company of California, are the property of the said trustee, free and clear of any right, title, interest or claim on the part of said respondents.

## ORDER

It is therefore ordered that the right, title and interest of C. B. Callahan and Consolidated Royalties, Inc., a corporation, in and to twelve percent (12%) of the oil produced, saved and sold and in and to 12% of the net proceeds received from the sale of all gas, casinghead gas and gasoline produced, saved and sold from Well No. 1, and in and to the funds in the hands of the Standard Oil Company of California in the amount [51] of \$846.08, plus such further proceeds as have accrued since April 30, 1940, is subject and subordinate to the \$4,000.00 in unpaid claims of creditors arising in



the drilling of Well No. 1, exclusive of the claim of Howard Supply Company. Should said claims be paid to the extent of \$4,000.00 the interest of respondents in and to said Well No. 1 shall thereupon be free and clear of any and all other claims of said bankrupt estate or creditors of said bankrupt and the 12% of the proceeds from the production of said wells, evidenced by respondents' royalty assignments, shall thereafter be paid to respondents.

It is further ordered that the said Standard Oil Company of California shall pay over to the trustee all proceeds from said 12% until further order of a court of competent jurisdiction.

It is further ordered that said respondents be, and hereby are, restrained from prosecuting any action in any court in respect to the proceeds of production from said property unless leave from this court first be had.

Dated this 26 day of November, 1941.

HUBERT F. LAUGHARN

Referee in Bankruptcy.

Approved as to form.

FLEMING & ROBBINS

By C. S. TINSMAN

Attorneys for Consolidated Royalties, Inc. and C. B. Callahan.

[Endorsed]: Filed Nov. 26, 1941. Hubert F. Laugharn, Referee. Filed Dec. 12, 1941. R. S. Zimmerman, Clerk. [52]



[Title of District Court and Cause.]

PETITION FOR REVIEW

Come now Consolidated Royalties, Inc., a corporation, and C. B. Callahan and petition for review of that certain order made by the above entitled Court on November 26, 1941, a copy of which is attached hereto, marked Exhibit "A", and made a part hereof, upon the following grounds, which are the alleged errors in respect thereto:

1. That said order is not sustained by the evidence;

2. That said order is against the law;

3. That the Referee erred in the following respects:

(a) In ordering that the 12% royalty interest of C. B. Callahan and Consolidated Royalties, Inc., was subject and subordinate to \$4,000.00 in unpaid claims of creditors arising in the drilling of Well No. 1;

(b) The Referee did not have jurisdiction under Chapter XI of the Bankruptcy Act to deprive C. B. Callahan and Consolidated Royalties, Inc., of their property in the summary manner attempted;

(c) The royalty assignment owned by respondents conveyed an interest in real property to respondents, which royalty interests were recorded and gave notice to creditors extending credit that the Deep Hole Drilling Company had no further interest in said royalty. The bankrupt deprived

itself of any interest in said royalty by said assignment; [53]

4. That by said order the property of respondents is unjustly confiscated and they are deprived of their property in violation of the provisions of the Constitution. Said order was based on a rule of property which is no longer recognized in the State of California. The Referee failed to follow the law of the State;

5. The facts as found show that no credit was extended to the debtor upon respondents' personal credit.

Wherefore, Respondents pray that the said order of the Referee may be reversed, annulled and set aside, and for such other and further order as may be meet and just in the premises.

CONSOLIDATED ROYALTIES, INC.,  
(Corporate Seal) By W. R. WHEAT,

President.

By E. W. CLARK,  
Secretary.

C. B. CALLAHAN,  
Petitioners

FLEMING & ROBBINS,  
By C. S. TINSMAN,  
Attorneys for Petitioners.

[54]

State of California,  
County of Los Angeles—ss.

E. W. Clark, being by me first duly sworn, deposes and says:

That Consolidated Royalties, Inc., is a corporation and that affiant is an officer thereof, to wit, the Treasurer, and as such officer makes this verification for and on behalf of said corporation, one of the respondents in the above entitled action; that he has read the foregoing Petition for Review and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters that he believes it to be true.

E .W. CLARK.

Subscribed and sworn to before me this 29th day of November, 1941.

(Seal) RUTH BATEY HUGHES,  
Notary Public in and for the County of Los Angeles, State of California.

(For Exhibit "A" Attached hereto; see preceding Order.)

[Endorsed]: Filed Dec. 2, 1941. Hubert F. Laugham, Referee. Filed Dec. 12, 1941. R. S. Zimmerman, Clerk. [55]

[Title of District Court, and Cause.]

REFEREE'S CERTIFICATE ON REVIEW

To the Honorable Paul J. McCormick, Judge of the  
District Court of the United States, in and for  
the Southern District of California, Central  
Division:

The debtor in this case filed in this Court on the 23rd day of September, 1939, a petition under the provisions of Chapter XI of the National Bankruptcy Act, which was approved by this Court as being properly filed under section 322. On April 22, 1940, the debtor was adjudicated a bankrupt. On May 17, 1940, an Order to Show Cause was issued direct to the respondents, Consolidated Royalties, Inc., and C. B. Callahan, returnable on May 27, 1940, which order to show cause required said respondents to show cause why an order should not be made directing the Standard Oil Company of California to turn over to the Trustee in Bankruptcy the proceeds of all production theretofore shipped and thereafter shipped and further decreeing that respondents had no right, title or interest in or to the production from said wells, and fixing and classifying the rights of respondents with respect to general creditors, and restraining respondents from proceeding in any action to collect the proceeds held by the Standard Oil Company of California. An answer was filed to said order to show cause by the said respondents. Said order to show cause was continued from time to time and there-



after and on June 24, 1940, a stipulation was entered into between the said Trustee and respondents, through their attorneys, as to the [56] facts to be considered by the Court in arriving at its conclusions in said matter and said matter was thereupon submitted.

Thereafter and on June 26, 1940, the Honorable Samuel W. McNabb, as Referee, filed his memorandum opinion re the interests of Respondents. Thereafter, and prior to signing an Order with respect thereto, the said Referee died and a stipulation was entered into between said Trustee and said respondents, through their attorneys, consenting to the signing of the formal order in said matter by Referee Hubert F. Laugharn, and pursuant to said stipulation, said order was signed on November 26, 1941.

The question to be decided on review is whether the order subordinating the respondents' royalty interests to the interests of general creditors of Deep Hole Well # 1, to the extent of \$4,000.00, was a proper order under the law and circumstances.

There is sent up herewith the following documents:

1. Petition of Harry Ashton, as Trustee, on Order to Show Cause.
2. Order to Show Cause and Restraining Order dated May 17, 1940.
3. Answer of Respondents, Consolidated Royalties, Inc., a corporation, and C. B. Callahan, to

Order to Show Cause and petition upon which it is based.

4. Stipulation of Facts upon such Order to Show Cause, Petition and Answer.

5. Memorandum Opinion of Samuel W. McNabb, Referee.

6. Stipulation that Referee Hubert F. Laugharn might sign order.

7. Order re interests of Consolidated Royalties, Inc., and C. B. Callahan.

8. Petition for Review of the Referee's Order.

Dated: December 11, 1941.

HUBERT F. LAUGHARN,

Referee in Bankruptcy.

[Endorsed]: Filed Dec. 12, 1941. R. S. Zimmerman, Clerk. [57]

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[Title of District Court and Cause.]

NOTICE OF HEARING OF PETITION  
FOR REVIEW

To: Fleming & Robbins, Los Angeles Stock Exchange Office Bldg., Los Angeles, California, attorneys for Consolidated Royalties, Inc., and C. B. Callahan; Lawler, Felix & Hall, Marcus Mattson and William T. Coffin, 800 Standard Oil Bldg., Los Angeles, California, Attorneys for Standard Oil Company of California; O. C. Sattinger, 1016 Southern California Gas Company Bldg., Los Angeles, California, Attorney for Howard Supply

Company; and George Appell and Cyril Moss, 1006 Garfield Bldg., Los Angeles, California, Attorneys for Deep Hole Drilling Corproation, Debtor.

You, and each of you, will please take notice that on January 12th, 1942, at the hour of 10 A. M. or as soon thereafter as counsel may be heard, a hearing will be had before the Honorable Paul J. McCormick in his courtroom, Federal Bldg., Los Angeles, California, on the Petition for Review of Referee's Order dated November 26, 1941, in connection with which the Referee's Certificate On Review was filed with the Clerk of the above court December 12th, 1941.

A memorandum of Points and Authorities is served herewith. Dated this 27th day of December, 1941.

RUSSELL B. SEYMOUR,  
Attorney for Harry Ashton,  
Trustee in the Above Matter.

[Endorsed]: Filed Dec. 30, 1941. R. S. Zimmerman, Clerk. [58]

At a stated term, to wit: The September Term, A.D., 1941, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 26th day of January in the year of our Lord one thousand nine hundred and forty-two.

Present:

The Honorable: Paul J. McCormick, District Judge.

No. 34,928-C Bkey.

In the matter of

DEEP HOLE DRILLING CORP.,  
a corporation, Debtor.

This matter coming on for hearing on Review of Referee's Order of November 26, 1941, pursuant to notice, filed December 30, 1941; C. S. Tinsman, Esq., appearing as counsel for the Consolidated Royalties Inc., et al., Petitioners on Review; Russell B. Seymour, Esq., appearing as counsel for Harry Ashton, Trustee:

Attorney Tinsman makes a statement in support and Attorney Seymour makes a statement in reply in opposition.

The Findings of Fact of the Referee in Bankruptcy are adopted, made the Findings of Fact of the Judge on Review and of the Court on Review, with an additional finding that for the period from the last payment of royalty for the month of Au-



gust, 1939, to September 23, 1939, no jurisdiction in the bankruptcy court has been established, and said court as to said period and as to the amount of interest or royalty or share, exclusively during said period, the bankruptcy court has no jurisdiction, and the Court adopts the Conclusions of Law of the Referee in Bankruptcy with modifications as to the amount of royalty interest to C. B. Callahan and Consolidated Royalties, Inc., for the period ending September 23, 1939, and such royalty interest and the amount of money impounded with the Standard Oil Company of California for said period to September 23, 1939, is the property of the Petitioners on Review and the debtor estate has no interest as to said property as to said period and the Bankruptcy Court has no jurisdiction of such portion of the funds impounded or on deposit with the Standard Oil Company of California, accordingly, with such modifications, [59] the order of the Referee dated November 26, 1941, is confirmed. Exceptions allowed to Petitioners on Review and the Trustee in bankruptcy, respectively. Counsel to prepare order thereon.

(M.Bk.24/911) [60]

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[Title of District Court and Cause.]

#### NOTICE OF APPEAL

Notice Is Hereby Given that Consolidated Royalties, Inc., a corporation, and C. B. Callahan hereby appeal to the Circuit Court of Appeals for the

Ninth Circuit from the Order on Petition for Review, entered in these proceedings on the 26th day of January, 1942.

FLEMING & ROBBINS and  
C. S. TINSMAN,  
By C. S. TINSMAN,  
Attorneys for Appellants, Con-  
solidated Royalties, Inc., and  
C. B. Callahan.  
Address: 639 South Spring  
Street, Los Angeles,  
California. [61]

Law Offices of  
Fleming & Robbins  
639 South Spring Street  
Los Angeles, California

February 26, 1942

Hon. R. S. Zimmerman  
Clerk of the U. S. District Court  
Federal Building  
Los Angeles, California.

Attention—E. L. Smith  
Re: Deep Hole Drilling Corporation  
Bankruptcy No. 34928-C

Dear Sir:

We are enclosing copies of Notice of the Appeal of Consolidated Royalties, Inc., and C. B. Callahan from the Order on Petition for Review entered in the above matter on January 26, 1942.

Will you please cause this Notice to be served upon the following attorneys:

Russell B. Seymour and George T. Goggin,  
535 Citizens National Bank Building,  
Los Angeles, California.

Lawler, Felix & Hall and Marcus Mattson and  
William T. Coffin,  
800 Standard Oil Building,  
Los Angeles, California.

O. C. Sattinger,  
1016 So. California Gas Co. Bldg.,  
Los Angeles, California.

George Appell and Cyril Moss,  
1006 Garfield Building,  
Los Angeles, California.

If there are any additional documents needed or copies of documents in connection with the same, we will immediately provide the same.

Yours very truly,  
FLEMING & ROBBINS,  
By C. S. TINSMAN,  
C. S. TINSMAN.

CST:ED

Encls.

[Endorsed]: Mailed E.L.S.

[Endorsed]: Filed Feb. 25, 1942. [63]

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH APPELLANTS INTEND TO RELY ON APPEAL.

This appeal arises in proceedings under Chapter XI of the United States Bankruptcy Act and is taken by Consolidated Royalties, Inc. and C. B. Callahan from an Order on Petition for Review of an order of the Referee in Bankruptcy which subordinated Appellants' right, title and interest in and to 12% of the oil produced, saved and sold, and in and to 12% of the net proceeds received from the sale of all gas, from Well #1, and in and to proceeds from the sale of oil in the hands of the Standard Oil Company, purchaser of said oil, which had accrued on and after September 1, 1939, to the claims of creditors, arising in the drilling of said Well #1, to the extent of \$4,000.00, and which order directed the Standard Oil Company of California, the purchaser of said oil, to pay over to the Trustee all proceeds from Appellants' said 12% of the oil until further order of the Court, and which order further restrained Appellants from prosecuting any action in any Court with respect to said production, unless leave of Court be [66] first obtained.

On the hearing of the Petition for Review of said order, the Honorable Paul J. McCormick, District Court Judge, modified the same to the extent of holding that royalties which had accrued prior to the date of the filing of the petition of the Debtor



under Chapter XI, on September 23, 1939, belonged to the Appellants, but affirmed the balance of said order and adopted the findings and conclusions of the Referee as the findings and conclusions of the Court, as so modified.

On their appeal from said order, Appellants intend to rely upon the following points, to wit:

I.

The Referee did not have jurisdiction under Chapter XI of the Bankruptcy Act to deprive Consolidated Royalties, Inc. and C. B. Callahan of their property in the summary manner attempted.

II.

The Court erred in making said order, in that, the findings were insufficient to justify the conclusion that Appellants' interest in said oil and the proceeds thereof in the hands of the Standard Oil Company were subordinate to the claims of creditors incurred in drilling said well to the extent of \$4,000.00, in that:

A. Appellants were conveyed 12% of the oil, which constitutes a conveyance of incorporeal interest in real property.

B. Appellants' ownership in said oil was acquired by conveyance executed more than four months prior to the filing of the petition under Chapter XI and after the well had been completed and on production and the findings disclose that insolvency resulted by reason of the extension of

credit by said creditors to the Debtor for the purpose of drilling Well #2.

C. Appellants' said interest was not subject to levy or sale under judicial process against the Debtor; was not transferrable by the Debtor; could not be considered a part of the [67] Debtor's estate.

### III.

The Court erred in making said order, in that, said order is against the law, in that:

A. Said conveyance of the 12% of the oil was acquired more than four months prior to bankruptcy, after said well had been completed and on production, and was not a part of the debtor's estate.

B. The proceeds of said oil were purchased by Standard Oil Company at the well and by reason of the division order and said conveyance the same constituted funds in its hands for the benefit of Appellants.

C. The Court failed to follow the law of the State of California with respect to the property interest acquired in said oil by Appellants and the law of said state which declares that Appellants are not to be classified as joint adventurers with the bankrupt.

### IV.

The Court erred in making said order, in that, it relied upon the case of *In re Lathrap*, 61 F. (2d) 37, which case Appellants believe to have been over-

ruled by the case of Laugharn vs. Bank of America, 88 F. (2d) 551, and the California courts have, since the Lathrap decision, determined the interest so acquired was an interest in real property and not an interest in personal property, which Appellants believe to have been the basis for the Lathrap case. Therefore, said case should no longer be followed.

Dated this 20th day of February, 1942.

FLEMING & ROBBINS and  
C. S. TINSMAN

By C. S. TINSMAN

Attorneys for Appellants,  
Consolidated Royalties, Inc.  
and C. B. Callahan. [68]

Received copy of the within Statement of Points  
Upon Which Appellants Intend to Rely on Appeal  
this 25 day of February, 1942.

RUSSELL B. SEYMOUR and  
GEORGE T. GOGGIN

By RUSSELL B. SEYMOUR E.H.

Attorneys for Harry L.  
Ashton, Trustee.

[Endorsed]: Filed Feb. 25, 1942. R. S. Zimmerman, Clerk. [69]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF  
RECORD ON APPEAL

In the above entitled proceeding under Chapter XI of the Bankruptcy Act, the Appellants, Consolidated Royalties, Inc. and C. B. Callahan, designate the following as the portions of the record, proceedings and evidence to be contained in the record on appeal taken by said Appellants from the Order on Petition for Review, made on January 26, 1942:

1. Petition of Harry Ashton, as Trustee, on Order to Show Cause.
2. Order to Show Cause and Restraining Order dated May 17, 1940.
3. Answer of Respondents, Consolidated Royalties, Inc., a corporation, and C. B. Callahan, to Order to Show Cause and petition upon which it is based.
4. Stipulation of Facts upon such Order to Show Cause, Petition and Answer.
5. Memorandum Opinion of Samuel W. McNabb, Referee. [71]
6. Stipulation that Referee Hubert F. Laugharn might sign order.
7. Order re interests of Consolidated Royalties, Inc., and C. B. Callahan.
8. Petition for Review of the Referee's Order.
9. Referee's Certificate on Review.



10. Notice of Hearing of Petition for Review.
11. Order on Petition for Review dated January 26, 1942.
12. Notice of Appeal.
13. Bond for Costs on Appeal.
14. Statement of Points on Which Appellants Intend to Rely on Appeal.
15. This Designation of Contents of Record on Appeal.

The Clerk will please prepare and transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit a Transcript of Record on Appeal in accordance with this designation.

Dated this 20th day of February, 1942.

FLEMING & ROBBINS and  
C. S. TINSMAN

By C. S. TINSMAN

Attorneys for Appellants,  
Consolidated Royalties, Inc.  
and C. B. Callahan

Received copy of the within Designation of Contents of Record on Appeal this 25 day of February, 1942.

RUSSELL B. SEYMOUR and  
GEORGE T. GOGGIN

By RUSSELL B. SEYMOUR E.H.  
Attorneys for Harry L.  
Ashton, Trustee.

[Endorsed]: Filed Feb. 25, 1942. R. S. Zimmerman, Clerk. [72]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, R. S. Zimmerman, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 73 inclusive contain full, true and correct copies of: Petition of Trustee for Order to Show Cause; Order to Show Cause and Restraining Order; Answer Respondents Appellants to Petition and Order to Show Cause; Stipulation of Facts and Exhibits Attached Thereto; Memorandum Opinion of Referee McNabb; Stipulation that Referee Laugharn May Sign Order; Order re Interests of Appellants; Petition for Review; Referee's Certificate on Review; Notice of Hearing Petition for Review; Order of District Judge on Review; Notice of Appeal; Bond for Costs on Appeal; Statement of Points on Appeal; Designation of Contents of Record on Appeal; which constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the fees of the clerk for comparing, correcting and certifying the foregoing record amount to \$10.85, which amount has been paid to me by Appellants.

Witness my hand and the seal of the said District Court this 13th day of March, A. D. 1942.

[Seal]

R. S. ZIMMERMAN

Clerk

By: EDMUND L. SMITH

Deputy.

[Endorsed]: No. 10088. United States Circuit Court of Appeals for the Ninth Circuit. Consolidated Royalties, Inc., a corporation, and C. B. Callahan, Appellants, vs. Harry Ashton, Trustee of the Estate of Deep Hole Drilling Corporation, a corporation, Bankrupt, Howard Supply Company, a corporation, I. Rude, Fred Lundberg, J. C. Hayward, and Standard Oil Company of California, a corporation, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed March 16, 1942.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 10088

CONSOLIDATED ROYALTIES, INC., a corpora-  
tion, and C. B. CALLAHAN,

Appellants,

HARRY L. ASHTON, Trustee in Bankruptcy for  
DEEP HOLE DRILLING CORPORATION,  
a corporation,

Appellee.

STATEMENT OF POINTS RELIED UPON ON  
APPEAL AND DESIGNATION OF REC-  
ORD FOR PRINTING, AND STIPULA-  
TION.

On their appeal herein, the Appellants state that they intend to rely upon the points mentioned in the Statement of Points upon which Appellants Intend to Rely on Appeal (Record p. 66) filed in the District Court and set forth in the record herein.

And the Appellants designate the following as those parts of the record necessary for the consideration of the points upon which the Appellants intend to rely on this appeal and for printing, to wit, all those parts of the record on appeal provided in the Appellants' Designation of Contents of Record on Appeal (Record p. 71) to be printed, with the exception of the cost bond on appeal, filed in the District Court and set forth in the record herein.



Dated this 13th day of March, 1942.

FLEMING & ROBBINS

By C. S. TINSMAN

Attorneys for Appellants.

It Is Hereby Stipulated that those portions of the record mentioned in the aforementioned designation shall constitute the record on appeal herein.

Dated this 13th day of March, 1942.

RUSSELL B. SEYMOUR and

GEORGE T. GOGGIN

By .....

Attorneys for Harry L.  
Ashton, Trustee.

Received copy of the within Statement of Points Relied Upon on Appeal and Designation of Record for Printing, and Stipulation this 13th day of March, 1942.

RUSSELL B. SEYMOUR and

GEORGE T. GOGGIN

By RUSSELL B. SEYMOUR E.H.

Attorneys for Harry L.  
Ashton, Trustee

[Endorsed]: Filed March 16, 1942. Paul P. O'Brien, Clerk.

